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8 **Specially Appearing Attorneys for Defendant**  
**JAN ROUVEN FUECHTENER**

9 **UNITED STATES DISTRICT COURT**  
10 **FOR THE DISTRICT OF NEVADA**

11 \* \* \* \*

11 **UNITED STATES OF AMERICA,** )  
12 **Plaintiff,** )  
13 **v.** ) **CASE NO: 2:16-cr-00100-GMN-CWH**  
14 **JAN ROUVEN FUECHTENER,** )  
15 **Defendant.** )

16 **DEFENDANT'S REPLY TO GOVERNMENT'S RESPONSE (ECF 300) TO MOTION FOR**  
17 **RECONSIDERATION (ECF 296) REGARDING MINUTE ORDER (ECF 295)**

18 **TO: THE UNITED STATES OF AMERICA;**

19 **TO: ALL INTERESTED PERSONS:**

20 COMES NOW, Defendant, JAN ROUVEN FUECHTENER, by and through specially  
21 appearing counsel DAVID Z. CHESNOFF, ESQ., and RICHARD A. SCHONFELD, ESQ., of the law  
22 firm of CHESNOFF & SCHONFELD, and hereby files his Reply to the Government's Response (ECF  
23 300) to Motion for Reconsideration (ECF 296) Regarding the Minute Order (ECF 295) Denying  
24 Defendant's Motion for Release of Funds For Purposes of Retaining Specially Appearing Counsel.  
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1 Motion for Release of Funds For Purposes of Retaining Specially Appearing Counsel.

2 The Motion is made and based upon the papers and pleadings on file herein, the attached  
3 Memorandum of Points and Authorities, and any argument or evidence that is received by the Court.

4 Dated this 3rd day of October, 2018

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6 Respectfully Submitted:

7 /s/ Richard A. Schonfeld

8 DAVID Z. CHESNOFF, ESQ.

9 Nevada Bar No. 2292

10 RICHARD A. SCHONFELD, ESQ.

11 Nevada Bar No. 6815

12 CHESNOFF & SCHONFELD

13 Specially Appearing Attorneys for Defendant

14 JAN ROUVEN FUECHTENER  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. MAGISTRATE JUDGE HOFFMAN HAS MADE A SPECIFIC FINDING THAT UNDERSIGNED COUNSEL ARE AUTHORIZED TO PROCEED WITH THIS MOTION FOR RECONSIDERATION ON BEHALF OF DEFENDANT.**

Preliminarily, as to the government's speculation that undersigned counsel were not authorized to file the Motion for Reconsideration on behalf of Defendant, on October 2, 2018, Magistrate Judge Hoffman made a specific finding during the hearing on Karen Connolly's Motion to Withdraw that "Mr. Schonfeld is authorized to proceed with the motion for reconsideration re: the release of funds." See ECF 302.

Accordingly, specially appearing undersigned counsel were authorized to file the Motion for Reconsideration on behalf of the Defendant, and said Motion is properly before this Honorable Court.

**II. RECONSIDERATION IS APPROPRIATE AS THE ISSUE REGARDING THE RESTRAINT OF DEFENDANT'S FUNDS IS NOT RENDERED MOOT BY THE APPOINTMENT OF KAREN CONNOLLY AS CJA COUNSEL.**

In the case at bar, Defendant respectfully seeks to retain his counsel of choice, which is his constitutional right under the Sixth Amendment to the United States Constitution.

The government alleges there is no basis for reconsideration, however, Defendant respectfully submits that the denial of his Defendant's Motion for Release of Funds for Purposes of Retaining Specially Appearing Counsel was clearly erroneous and manifestly unjust, as Defendant has been rendered indigent by the restraint of funds, and but for the restraint of funds in this case, Defendant would have the funds to retain undersigned counsel. Accordingly, the appointment of CJA counsel has not rendered the Motion moot.

1 The government's Response states in part: "Should the Court not deny the motion based on the  
2 motion to reconsider standard, the Government respectfully requests that the Court order specially  
3 appearing counsel to set forth the actual arguments to which the Government should respond." ECF  
4 300, p. 2, lines 9-12.

5 It is unclear what the government is requesting. Defendant's previously filed Motion for  
6 Release of Funds for Purposes of Retaining Specially Appearing Counsel set forth specific arguments  
7 and requested that at most, \$580,200 should be restrained through sentencing, and \$395,100 should  
8 be returned to Defendant forthwith. This is because the amount of alleged victims seeking restitution  
9 was only fourteen. In addition, Defendant asserted that the breakdown of potential monetary  
10 impositions at sentencing are:

- 12 • \$70,000 potential restitution;
- 13 • \$10,200 potential assessments; and
- 14 • \$500,000 potential statutory fines;
- 15 • Potential total \$580,200.

16 Again, the court is currently holding \$975,300. Accordingly, \$395,100 should be released  
17 forthwith. Alternatively, Defendant requested the release of \$250,000.00 being held by the clerk to  
18 be applied as fees to the law firm of Chesnoff & Schonfeld, and an additional \$50,000.00 to be applied  
19 towards future costs for purposes of addressing the issues related to his request to withdraw his guilty  
20 plea, a trial if granted, a sentencing if denied, an appeal, and relief pursuant to Section 2255.  
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22 The government still has not substantively responded as to how or why more than \$580,200  
23 needs to be restrained. The government has given up the opportunity to respond in substance.  
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1 The government further argues in its Response that “in reply, recognizing that the entire legal  
2 basis of his argument was incorrect, the Defendant offered a whole new set of arguments in violation  
3 of the Court’s local rules.” See Response, ECF 300 at p. 2, lines 14-16.

4 That is respectfully incorrect. Defendant maintained that the restraint of funds violated his  
5 Sixth Amendment rights and his right to counsel of choice. Moreover, Defendant maintained that the  
6 restraint of funds in excess of the amounts set forth above were in violation of the Sixth Amendment  
7 and *Luis* and constituted a pre-conviction seizure/restraint of funds that violated Defendant’s ability  
8 to retain counsel of choice.

9 Defendant also addressed that the calculation as set forth above was not previously addressed  
10 by the court. This was raised after the government argued that the Motion for Release of Funds for  
11 Purposes of Retaining Specially Appearing Counsel was simply a request to reconsider the prior ruling  
12 regarding the restraint of funds (before specially appearing counsel filed their Motion).

13 Simply stated, the Defendant respectfully requests that this Honorable Court reconsider his  
14 previously filed Motion for Release of Funds for Purposes of Retaining Specially Appearing Counsel,  
15 as it was not rendered moot by the appointment of Karen Connolly as CJA counsel. The appointment  
16 of Ms. Connolly as CJA counsel, as opposed to retained counsel, was only done because Defendant  
17 is now indigent due to said restraint of funds, and the Magistrate Judge did not want to leave  
18 Defendant without representation prior to sentencing.  
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1 This is a very serious case with complex legal issues. Again, it must be noted that the wrongful  
2 denial of counsel of choice constitutes structural error and warrants automatic reversal. *See U.S. v.*  
3 *Gonzalez-Lopez*, 548 U.S. 140, 126 S. Ct. 2557 (2006).

4 Accordingly, the issue relating to the release of Defendant's funds for purposes of retaining  
5 specially appearing counsel as his counsel of choice is not moot, and Defendant respectfully requests  
6 reconsideration of the September 10, 2018 Minute Order denying his Motion for Release of Funds for  
7 Purposes of Retaining Specially Appearing Counsel.  
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9 Dated this 3rd day of October, 2018

10 Respectfully Submitted:

11 /s/ Richard A. Schonfeld  
12 DAVID Z. CHESNOFF, ESQ.  
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